



Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800

Please Respond to:

Office of Agricultural Water Policy
1203 Governor's Square Boulevard, Suite 200
Tallahassee, Florida 32301

August 19, 2002

Kenneth G. Ammon, P.E.
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Dear Mr. Ammon:

Thank you for the opportunity to review and comment on the draft white paper, *Reservations of Water for the Environment and Assurances for Existing Legal Sources Consistent with Federal and State Law*. We recognize the substantial effort by District staff to produce this initial draft and appreciate being able to provide input while it is still under development. Our intent is to monitor the progress of this continuing effort and provide input through participation in the Water Resources Advisory Commission and the Working Group. The following comments are offered to identify issues of general concern and we anticipate providing more specific comments as subsequent drafts are made available.

Water reservations are a matter of state law. This was acknowledged, and affirmed, in WRDA 2000 and the current draft of the Programmatic Regulations clearly defers to the jurisdiction of Florida law in reserving or allocating water. It is a matter of concern that the draft appears to suggest that water reservations must be consistent with both state and federal law. Implementing water reservations in a manner that is consistent with the District's commitments to the federal government as local sponsor for CERP is not necessarily an unreasonable objective. However, matters of state law should not be constrained nor unduly influenced by federal law in order to facilitate meeting those responsibilities. Put simply, water reservations ought to be implemented in the same manner as they would be elsewhere in the state. We suggest that an effort be made to more clearly distinguish between the legal requirements of Florida law for water reservations and the implications that those requirements may have for matters of federal law.



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We also have general concerns related to the issue of "existing legal sources," specifically the exclusion of all regulatory discharges to tide. The rationale for this is that "...these discharges have not been historically depended upon by consumptive uses or the natural system. Additionally, these regulatory discharges are the main focus for capture and redistribution as part of the CERP program" (*Initial Draft*, page 17). This seems to imply that because such discharges were not depended upon, none of the water discharged to tide was available to existing legal users. It is unclear whether a further implication is that none of this water will be available unless made available by a completed CERP project component. If so, it appears to be a de facto reservation of all the water currently discharged to tide. We suggest that clarification of this issue is necessary. We also recommend quantification of the discharges to tide, including identification of 1) the quantity of water that will be "captured" by CERP, 2) the quantity of water that currently provides non-consumptive or natural system benefits, and 3) the quantity remaining.

District water use rules, the "B" list rules, are currently under development and proposed for adoption by December 2002. Several of these rules are integral to the implementation of water reservations and assurances, and ought to be developed concurrently with the broader policies addressed in the initial draft. We suggest more detailed discussion of these rules than is in the current draft and also that the rule adoption schedule be coordinated with the schedule for developing the broader policies related to reserving water for the natural system and providing assurances for existing legal users.

Thank you again for the opportunity to provide these comments. We look forward to continuing to work with you on these issues.

Sincerely,

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE


for Charles C. Aller, Director
Office of Agricultural Water Policy

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